

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Robert Kwan, Presiding
Courtroom 1675 Calendar**

Friday, September 10, 2021

Hearing Room 1675

9:00 AM

2:18-11475 Catherine Trinh

Chapter 11

#1.00 EVIDENTIARY HEARING RE: Motion for allowance and payment of an administrative expense claim pursuant to 11 U.S.C. §503
fr. 4/28/21, 5/26/21, 6/30/21

Docket 563

***** VACATED *** REASON: Cont'd from 9:00 a.m. to 12:00 p.m. per
order entered on 8/23/21-mb.**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Updated tentative ruling as of 9/1/21. The evidentiary hearing on the motion will begin at 12:00 p.m. noon per order entered on 8/23/21 due to a scheduling conflict. No tentative ruling on the merits. Appearances are required on 9/10/21 at noon, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Revised and updated tentative ruling as of 7/12/21.

Having considered the moving, opposing, reply and sur-reply papers relating to the motion of Second Generation, Inc., for allowance and payment of administrative expense claim pursuant to 11 U.S.C. §503, the court issues the following tentative ruling.

Section 503(b)(3)(D) of the Bankruptcy Code, 11 U.S.C., provides that a creditor may recover attorneys' fees as an administrative expense if the creditor makes a "substantial contribution in a case under chapter . . . 11. . . ." In order for such a claim to be allowed under this statute, the claimant must show that (1) it is a creditor and (2) it made a "substantial contribution to the case. In re Cellular 101, Inc., 377 F.3d 1092, 1096 (9th Cir 2004). According to the Ninth Circuit, "the principal test of substantial contribution is 'the extent of benefit to the estate'". Id. Services that "contribute to a case are those which foster and enhance rather than retard or interrupt the progress o[f]

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reorganization." *Id.*, cited and quoted in *In re 1250 Oceanside Partners*, 519 B.R. 802, 806-807 (Bankr. D. Haw. 2014). In determining whether a creditor has made a substantial contribution, the courts have considered the following factors: (1) whether the services were undertaken solely for the benefit of the party itself or for the benefit of all parties in the case; (2) whether the services were actions that would have been taken by the parties on its own behalf, absent of an expectation of reimbursement from the estate; (3) whether the parties can demonstrate that its actions provided a direct, significant and demonstrable benefit to the estate; and (4) whether the actions were duplicative of those being taken by other parties in the case, such as the debtor, a trustee or an official committee. *Id.* at 807, citing and quoting, 4-503 *Collier on Bankruptcy*, ¶503.10[5][a] (14th ed. 2014). There is a split of case authority on the issue whether a creditor's motives are relevant or not, but the Ninth Circuit has not decided the issue, only stating that the extent of the benefits on the estate can outweigh concerns about the claimant's self-interest. *Id.*, citing, *In re Cellular 101, Inc.*, 377 F.3d at 1097. Nevertheless, courts construe 11 U.S.C. §503(b)(3) narrowly in order to hold administrative expenses to a minimum. *Id.*, citing *In re Sentinel Management Group, Inc.*, 404 B.R. 488, 494 (Bankr. N.D. Ill. 2009). As stated by one court, "The integrity of §503(b) can only be maintained by strictly limiting compensation to extraordinary creditor actions which lead directly to significant and tangible benefits to the creditors, debtor or the estate." *In re D.W.G.K. Restaurants, Inc.*, 84 B.R. 684, 690 (Bankr. S.D. Cal. 1988); see also, *In re Mortgages, Ltd.*, No. AZ-09-1412-KiJuMk, 2010 WL 6259981 (9th Cir. BAP 2010), slip op. at *8.

In applying the two part standard for substantial contribution under *In re Cellular 101*, there is no dispute that the claimant, Second Generation, is a creditor as it holds state court judgments against the debtor, and thus, the issue then is whether it made a "substantial contribution to the case. In *re Cellular 101, Inc.*, 377 F.3d at 1096.

At this time, it is unclear whether claimant has made a substantial contribution to the case because the case is administratively insolvent and since the plan trustee has not realized sufficient assets to pay any distributions to creditors other than claimant which apparently holds a secured claim of \$4.3 million.

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The expectation is that the sale of the Las Flores property based on 100% inclusion in the estate as community property at \$3.5 million would bring in value to creditors, but if claimant holds a claim secured by the Las Flores property exceeding its value, then it is uncertain whether there is any benefit to the case other than to claimant. Moreover, there is no final judgment as to the Las Flores property or on the other claims in the Voong adversary proceeding.

Thus, looking at the various Collier factors of (1) whether the services were undertaken solely for the benefit of the party itself or for the benefit of all parties in the case, it is unclear at this time whether creditors other than claimant will benefit in this case from claimant's contribution; (2) whether the services were actions that would have been taken by the parties on its own behalf, absent of an expectation of reimbursement from the estate, this factor would be in claimant's favor as to the intervention in the adversary proceeding, but unclear as to plan confirmation; (3) whether the parties can demonstrate that its actions provided a direct, significant and demonstrable benefit to the estate, it is unclear at this time whether any creditors other than claimant will benefit from its contribution as this time since the plan assets have not been liquidated to make distributions to creditors; and (4) whether the actions were duplicative of those being taken by other parties in the case, such as the debtor, a trustee or an official committee, claimant seeking fees of \$119,919.50 for services relating to plan confirmation services, and counsel for debtor is seeking \$235,514.00 for plan confirmation services (for a total of \$335,433.50). According to claimant, it made a substantial contribution in objecting to, and later assisting, in negotiating a consensual plan, which raises the possibility of duplication of services. The court thus agrees with the objecting creditors in the surreply that it should postpone considering the motion until it considers the final fee application of counsel for debtor for services on the same tasks, and in the court's view, the review of the fees on the same tasks between counsel for debtor and counsel for claimant should be coordinated and consistent to avoid duplication of services. Thus, the court would continue the hearing on the pending motion to 9/16/21 at 2:00 p.m., which would be after the evidentiary hearing on the final fee application of counsel for debtor. Alternatively, the court could deny the motion without prejudice pending a showing of a probability of a

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distribution to creditors other than claimant (\$4.3 million) or professionals (over \$1 million) to demonstrate a significant and tangible benefit to the estate or the creditors.

Appearances are required on 7/13/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 6/29/21. No tentative ruling on the merits. The court notes that movant filed additional factual material in its reply to the creditors' opposition to the motion and that the plan trustee filed a response to the motion partially in support and partially in opposition. The parties should advise whether there will be additional evidence to be offered on the motion and whether an evidentiary hearing is required to receive such evidence, which may include testimony, in order for the evidentiary record on the motion to be complete. In addition to the Ninth Circuit's opinion in *In re Cellular 101, Inc.*, 377 F.3d 1092 (9th Cir. 2004), the parties should consider the discussion and analysis of the applicable legal standard in the opinion of another court in the Ninth Circuit in *In re Oceanside Partners*, 519 B.R. 802 (Bankr. D. Haw. 2014), which the court finds to be useful and instructive, when they are preparing to argue on the motion. If an evidentiary hearing is required, the court expects that it would take 1-2 hours. Appearances are required on 6/30/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 5/24/21. The court has received the unredacted billing entries submitted in camera to the court as requested at the prior hearing, which the court has reviewed. However, debtor filed on 5/19/21 a declaration in opposition to the motion, which is an untimely opposition to the motion. Certain creditors filed on 5/21/21 a motion to continue the hearing on the application, and other creditors filed a joinder to the motion to continue. The court is inclined to grant the motion to continue the hearing though not primarily due to the late filing of the debtor's opposition and of the creditors' motion to continue pursuant to Local Bankruptcy Rule 9013-1. Debtor has not stated a good reason to excuse her late filing, and creditors have not

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stated a good reason for their late motion to continue as they did not timely oppose the application before the initial hearing on the application or before the continued hearing on the motion. Their reason that the unredacted billing entries had not been filed is not a good reason for continuance as the court allowed applicant to submit the unredacted billing entries in camera as there was no objection to this at the initial hearing on the application. The court should continue the hearing primarily because it has concerns about the allowability of fees for objecting to the disclosure statement which was really to protect its own interests as opposed to the general interests of creditors and the estate, but the court is inclined to allow the fees for intervening and opposing the adversary proceeding brought by debtor's spouse regarding the transfer of the residence on behalf of creditors and the estate, and since the court has these concerns, it may as well allow other parties to be heard on these concerns.

The creditors moving for continuance object to the fees of applicant in part because such fees are duplicative of fees for work performed by general bankruptcy counsel for debtor in possession, and this is also a reason for the court to continue the hearing because it has to also look at the fee application of general bankruptcy counsel for debtor in possession to evaluate whether there is such duplication. It makes sense in the court's view to continue the hearings on all professional fee applications to consider their interrelationships and to evaluate whether the fees are for services that are reasonable and beneficial to creditors and the estate.

In evaluating whether the unredacted billing statements of applicant should be filed as part of the public record or perhaps filed under seal with a protective order, it seemed to the court that the redactions were made to protect the confidentiality of communications with its client representative or the references to applicant's strategy pertaining to ongoing litigation. If such disclosure must be made, it may be required to be under seal with a protective order.

As to the pending motion to continue, the court will not rule on it before the hearing on 5/26/21, so the parties in interest could be heard on the motion, and the court and the parties can discuss scheduling of further proceedings.

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Appearances are required on 5/26/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 4/26/21. The court is unable to complete its review of the motion because it requests fees for services for which numerous billing entries to substantiate the fees as actual, necessary expenses benefitting the bankruptcy estate under 11 U.S.C. 503(b)(3)(B) and (D) are redacted and the court is unable to determine whether the fees are actual, necessary expenses benefitting the estate without the redacted information describing the tasks performed by applicant. Applicant will need to submit unredacted billing entries for the court to complete its review of the requested fees, and thus, it appears that the hearing will need to be continued in order for movant to submit unredacted billing entries and for the court to review them.

Appearances are required on 4/28/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Catherine Trinh

Represented By
Alan W Forsley

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#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

Parties in interest and members of the public may connect to the video and audio feeds, free of charge, using the connection information provided below.

Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone). Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

Neither a Zoom nor a ZoomGov account is necessary to participate and no pre-registration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address: <https://cacb.zoomgov.com/j/1607851317>

ZoomGov meeting number: 160 785 1317

Password: 048957

Telephone conference lines: 1 (669) 254 5252 or 1 (646) 828 7666

For more information on appearing before Judge Kwan by ZoomGov, please see the "Notice of Video and Telephonic Appearance Procedures for Judge Robert N. Kwan's Cases" on the Court's website at:

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<https://www.cacb.uscourts.gov/judges/honorable-robert-n-kwan> under the "Telephonic Instructions" section.

To assist in creating a proper record and for the efficiency of these proceedings, please:

- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
- Say your name every time you speak.
- Disconnect from the meeting by clicking "Leave" when you have completed your appearance(s).

Docket 0

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

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#2.00 EVIDENTIARY HEARING RE: Motion for allowance and payment of an administrative expense claim pursuant to 11 U.S.C. §503
fr. 4/28/21, 5/26/21, 6/30/21

Docket 563

***** VACATED *** REASON: Cont'd from 9/10/21 to 10/15/21 at 9:00 a.m.
per order entered on 9/8/21-mb.**

Courtroom Deputy:

[Cont'd from 9/10/21 to 10/15/21 at 9:00 a.m. per order entered on 9/8/21]

[Cont'd from 9:00 a.m. to 12:00 p.m. per order entered on 8/23/21]

Tentative Ruling:

Updated tentative ruling as of 9/1/21. The evidentiary hearing on the motion will begin at 12:00 p.m. noon per order entered on 8/23/21 due to a scheduling conflict. No tentative ruling on the merits. Appearances are required on 9/10/21 at noon, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Revised and updated tentative ruling as of 7/12/21.

Having considered the moving, opposing, reply and sur-reply papers relating to the motion of Second Generation, Inc., for allowance and payment of administrative expense claim pursuant to 11 U.S.C. §503, the court issues the following tentative ruling.

Section 503(b)(3)(D) of the Bankruptcy Code, 11 U.S.C., provides that a creditor may recover attorneys' fees as an administrative expense if the creditor makes a "substantial contribution in a case under chapter . . . 11. . . ." In order for such a claim to be allowed under this statute, the claimant must show that (1) it is a creditor and (2) it made a "substantial contribution to the case. In re Cellular 101, Inc., 377 F.3d 1092, 1096 (9th Cir 2004). According

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to the Ninth Circuit, "the principal test of substantial contribution is 'the extent of benefit to the estate'". *Id.* Services that "contribute to a case are those which foster and enhance rather than retard or interrupt the progress o[f] reorganization." *Id.*, cited and quoted in *In re 1250 Oceanside Partners*, 519 B.R. 802, 806-807 (Bankr. D. Haw. 2014). In determining whether a creditor has made a substantial contribution, the courts have considered the following factors: (1) whether the services were undertaken solely for the benefit of the party itself or for the benefit of all parties in the case; (2) whether the services were actions that would have been taken by the parties on its own behalf, absent of an expectation of reimbursement from the estate; (3) whether the parties can demonstrate that its actions provided a direct, significant and demonstrable benefit to the estate; and (4) whether the actions were duplicative of those being taken by other parties in the case, such as the debtor, a trustee or an official committee. *Id.* at 807, citing and quoting, 4-503 *Collier on Bankruptcy*, ¶503.10[5][a] (14th ed. 2014). There is a split of case authority on the issue whether a creditor's motives are relevant or not, but the Ninth Circuit has not decided the issue, only stating that the extent of the benefits on the estate can outweigh concerns about the claimant's self-interest. *Id.*, citing, *In re Cellular 101, Inc.*, 377 F.3d at 1097. Nevertheless, courts construe 11 U.S.C. §503(b)(3) narrowly in order to hold administrative expenses to a minimum. *Id.*, citing *In re Sentinel Management Group, Inc.*, 404 B.R. 488, 494 (Bankr. N.D. Ill. 2009). As stated by one court, "The integrity of §503(b) can only be maintained by strictly limiting compensation to extraordinary creditor actions which lead directly to significant and tangible benefits to the creditors, debtor or the estate." *In re D.W.G.K. Restaurants, Inc.*, 84 B.R. 684, 690 (Bankr. S.D. Cal. 1988); see also, *In re Mortgages, Ltd.*, No. AZ-09-1412-KiJuMk, 2010 WL 6259981 (9th Cir. BAP 2010), slip op. at *8.

In applying the two part standard for substantial contribution under *In re Cellular 101*, there is no dispute that the claimant, Second Generation, is a creditor as it holds state court judgments against the debtor, and thus, the issue then is whether it made a "substantial contribution to the case. In *re Cellular 101, Inc.*, 377 F.3d at 1096.

At this time, it is unclear whether claimant has made a substantial contribution

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to the case because the case is administratively insolvent and since the plan trustee has not realized sufficient assets to pay any distributions to creditors other than claimant which apparently holds a secured claim of \$4.3 million. The expectation is that the sale of the Las Flores property based on 100% inclusion in the estate as community property at \$3.5 million would bring in value to creditors, but if claimant holds a claim secured by the Las Flores property exceeding its value, then it is uncertain whether there is any benefit to the case other than to claimant. Moreover, there is no final judgment as to the Las Flores property or on the other claims in the Voong adversary proceeding.

Thus, looking at the various Collier factors of (1) whether the services were undertaken solely for the benefit of the party itself or for the benefit of all parties in the case, it is unclear at this time whether creditors other than claimant will benefit in this case from claimant's contribution; (2) whether the services were actions that would have been taken by the parties on its own behalf, absent of an expectation of reimbursement from the estate, this factor would be in claimant's favor as to the intervention in the adversary proceeding, but unclear as to plan confirmation; (3) whether the parties can demonstrate that its actions provided a direct, significant and demonstrable benefit to the estate, it is unclear at this time whether any creditors other than claimant will benefit from its contribution as this time since the plan assets have not been liquidated to make distributions to creditors; and (4) whether the actions were duplicative of those being taken by other parties in the case, such as the debtor, a trustee or an official committee, claimant seeking fees of \$119,919.50 for services relating to plan confirmation services, and counsel for debtor is seeking \$235,514.00 for plan confirmation services (for a total of \$335,433.50). According to claimant, it made a substantial contribution in objecting to, and later assisting, in negotiating a consensual plan, which raises the possibility of duplication of services. The court thus agrees with the objecting creditors in the surreply that it should postpone considering the motion until it considers the final fee application of counsel for debtor for services on the same tasks, and in the court's view, the review of the fees on the same tasks between counsel for debtor and counsel for claimant should be coordinated and consistent to avoid duplication of services. Thus, the court would continue the hearing on the pending motion

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to 9/16/21 at 2:00 p.m., which would be after the evidentiary hearing on the final fee application of counsel for debtor. Alternatively, the court could deny the motion without prejudice pending a showing of a probability of a distribution to creditors other than claimant (\$4.3 million) or professionals (over \$1 million) to demonstrate a significant and tangible benefit to the estate or the creditors.

Appearances are required on 7/13/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 6/29/21. No tentative ruling on the merits. The court notes that movant filed additional factual material in its reply to the creditors' opposition to the motion and that the plan trustee filed a response to the motion partially in support and partially in opposition. The parties should advise whether there will be additional evidence to be offered on the motion and whether an evidentiary hearing is required to receive such evidence, which may include testimony, in order for the evidentiary record on the motion to be complete. In addition to the Ninth Circuit's opinion in *In re Cellular 101, Inc.*, 377 F.3d 1092 (9th Cir. 2004), the parties should consider the discussion and analysis of the applicable legal standard in the opinion of another court in the Ninth Circuit in *In re Oceanside Partners*, 519 B.R. 802 (Bankr. D. Haw. 2014), which the court finds to be useful and instructive, when they are preparing to argue on the motion. If an evidentiary hearing is required, the court expects that it would take 1-2 hours. Appearances are required on 6/30/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 5/24/21. The court has received the unredacted billing entries submitted in camera to the court as requested at the prior hearing, which the court has reviewed. However, debtor filed on 5/19/21 a declaration in opposition to the motion, which is an untimely opposition to the motion. Certain creditors filed on 5/21/21 a motion to continue the hearing on the application, and other creditors filed a joinder to the motion to continue. The court is inclined to grant the motion to continue the hearing though not

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primarily due to the late filing of the debtor's opposition and of the creditors' motion to continue pursuant to Local Bankruptcy Rule 9013-1. Debtor has not stated a good reason to excuse her late filing, and creditors have not stated a good reason for their late motion to continue as they did not timely oppose the application before the initial hearing on the application or before the continued hearing on the motion. Their reason that the unredacted billing entries had not been filed is not a good reason for continuance as the court allowed applicant to submit the unredacted billing entries in camera as there was no objection to this at the initial hearing on the application. The court should continue the hearing primarily because it has concerns about the allowability of fees for objecting to the disclosure statement which was really to protect its own interests as opposed to the general interests of creditors and the estate, but the court is inclined to allow the fees for intervening and opposing the adversary proceeding brought by debtor's spouse regarding the transfer of the residence on behalf of creditors and the estate, and since the court has these concerns, it may as well allow other parties to be heard on these concerns.

The creditors moving for continuance object to the fees of applicant in part because such fees are duplicative of fees for work performed by general bankruptcy counsel for debtor in possession, and this is also a reason for the court to continue the hearing because it has to also look at the fee application of general bankruptcy counsel for debtor in possession to evaluate whether there is such duplication. It makes sense in the court's view to continue the hearings on all professional fee applications to consider their interrelationships and to evaluate whether the fees are for services that are reasonable and beneficial to creditors and the estate.

In evaluating whether the unredacted billing statements of applicant should be filed as part of the public record or perhaps filed under seal with a protective order, it seemed to the court that the redactions were made to protect the confidentiality of communications with its client representative or the references to applicant's strategy pertaining to ongoing litigation. If such disclosure must be made, it may be required to be under seal with a protective order.

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As to the pending motion to continue, the court will not rule on it before the hearing on 5/26/21, so the parties in interest could be heard on the motion, and the court and the parties can discuss scheduling of further proceedings.

Appearances are required on 5/26/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Prior tentative ruling as of 4/26/21. The court is unable to complete its review of the motion because it requests fees for services for which numerous billing entries to substantiate the fees as actual, necessary expenses benefitting the bankruptcy estate under 11 U.S.C. 503(b)(3)(B) and (D) are redacted and the court is unable to determine whether the fees are actual, necessary expenses benefitting the estate without the redacted information describing the tasks performed by applicant. Applicant will need to submit unredacted billing entries for the court to complete its review of the requested fees, and thus, it appears that the hearing will need to be continued in order for movant to submit unredacted billing entries and for the court to review them.

Appearances are required on 4/28/21, but counsel and self-represented parties must appear through Zoom for Government in accordance with the court's remote appearance instructions.

Party Information

Debtor(s):

Catherine Trinh

Represented By
Alan W Forsley